

Forever float that standard ship!
Where breathes the foe but falls before us?
With Freedom's soil beneath our feet,
And Freedom's banner streaming o'er us!

The Case of the Trent.

We publish to-day Mr. Seward's reply to Earl Russell's letter on the Trent affair. We do not publish the communication of the latter, because its contents are fully stated by Mr. Seward.

A communication also accompanies Mr. Seward's letter, from M. Thouvenel, French minister of foreign affairs, in which he deprecates the injury which would result to neutral vessels if the act of Com. Wilkes should be approved, and hopes that the persons taken from the Trent will be released.

Mr. Seward makes a courteous reply, telling M. Thouvenel that the president had directed their release before the receipt of his communication, and intimating that this government is ready to make a more definite arrangement in relation to the whole subject of neutral rights than now exists.

The letter of Mr. Seward in reply to Earl Russell is long, but the great interest which attaches to the subject, as well as justice to Mr. Seward, requires its general publication. It is characterized by his usual ability, and the unpleasant subject which he discusses is treated as if nothing disagreeable had taken place. He even appears to be pleased that Russell has called his attention to a subject which otherwise might have escaped his notice, and is especially gratified that the question, the exercise of the right of search and seizure on board of neutral vessels, which has so long been a matter of dispute between this country and England, is at last "finally settled" between them, on the American basis. Perhaps this is so, but we do not see by this correspondence that England has agreed to anything, except that she wants Mason and Slidell given up and an apology for the affront she says she has received. We fail to find any "apology" in Mr. Seward's communication, but perhaps it may be inferred, from the readiness with which the prisoners were surrendered. We hope England will be satisfied now, but we have little expectation that such will be the case.

The perusal of this correspondence confirms the first impression in relation to the affair: that an outrage was committed when the captain of the Trent, attempted to convey Mason and Slidell to England, knowing their character, which the British government seeks to justify; and that we are compelled to forgo satisfaction for the injury, because that government takes advantage of the quibble about a prize court; and for the further reason that it is impolitic for us to seem to defend an unrestricted right of search, in which so many inferior commercial powers are interested, who would be necessarily against us, in the shape in which the matter stood. This false position in which we were placed by England, and the aggression perpetrated in insisting upon conveying the rebel ambassadors to Europe, will not soon be forgotten by our people.

In Town.—Charles H. Windt, the western travelling agent of the Merchant's Dispatch Line, has been in town a day or two, on his annual western trip. The "freedom of the city" has been informally voted to Charles, and he is now in the full enjoyment of it. We commend Charles to our friends everywhere as the right kind of a man, and his company as worthy of the utmost confidence. Artemus Ward, while connected with the Cleveland Plaindealer, asserted that Mr. W. had "more than twelve acres of friends," and we incline to the same opinion, while we know his company is eminently "sound" and confessedly expeditious.

CAMP THURSDAY, Jan. 2, '62.
All persons holding orders drawn on the pay master, of the thirteenth regiment by the undersigned captains of said regiment, will please present them to the respective captains drawing the same, by Friday morning, eight o'clock.

Edward Ruger, Capt. Co. A.
Ed. E. Woodman, Capt. Co. B.
A. H. Kummel, Capt. Co. C.
E. W. Blake, Capt. Co. D.
Robert H. Howitt, Capt. Co. E.
F. F. Stevens, Capt. Co. F.
A. W. Randall, Capt. Co. G.
J. L. Pratt, Capt. Co. H.
J. H. Lauderdale, Capt. Co. I.
P. Henry Norcross, Capt. Co. K.

SCHOOL FESTIVAL.—The annual festival for the benefit of St. Cuthbert's school will be held at the Lyttel House on Wednesday evening, January 8th.

When our citizens will bear in mind that in the school for the benefit of which this festival is to be held, there are over two hundred children taught without any expense to the city school fund, it must certainly present itself favorably for their support.

Aside from its immediate object, the manner in which the former festivals for the same purpose have been conducted, warrant us in stating that the occasion will afford an opportunity for those who may wish to attend to spend an evening very agreeably.

That the letter of Commander Williams, dated royal mail contract packet-boat, Trent, at sea, Nov. 9th, states that that vessel left Havana on the 7th of November, with her Majesty's mails for England, having on board numerous passengers. Shortly after noon, on the 8th of November, the United States war steamer San Jacinto, Capt. Wilkes, not showing colors, was observed ahead. That steamer, on being hailed by the Trent, at one o'clock fifteen minutes in the afternoon, fired a round shot from a pivot gun across her bows, and showed American colors. While the Trent was approaching slowly toward the San Jacinto, a shell discharged at a short range from the Trent's bow, which exploded at half a cable's length before her. The Trent then stopped, and an officer with a large armed guard of marines boarded her. The officer said he had orders to arrest Messrs. Mason, Slidell, McFarland and Eustis, and had some information that they were passengers in the Trent. While some parley was going on upon this matter, Mr. Russell stepped forward and said to the American officer that the four persons he had named were standing before him. The commander of the Trent and Commander Williams protested against the act of taking those four passengers out of the Trent, they then being under the protection of the British flag. But the San Jacinto was at this time only two hundred yards from the Trent, and the latter, upon the San Jacinto's demand, was obliged to retire. The four persons named were then forcibly taken out of the ship. A further demand was made that the commander of the Trent should proceed on board the San Jacinto, but he said he would not go unless forcibly compelled, and this demand was not insisted upon.

Upon this statement Earl Russell remarks that it thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral power, while that vessel was pursuing a lawful and innocent voyage, an act of violence which was an affront to the British flag, and a violation of international law. Earl Russell next states that her Majesty's government, having in mind the friendly relations which have long subsisted between Great Britain and the United States, are willing to believe that the naval officer who committed this aggression was not acting in compliance with any authority from his government, or that, if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received.

Earl Russell argues that the United States must be fully aware that the British government could not allow such an affront to the national honor to pass without full reparation, and they are willing to believe that it could not be the deliberate intention of the government of the United States to necessarily force into discussion between the two governments a question of no grave character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

Earl Russell, resting upon the statement and the argument which I have thus recited, closes with saying that her Majesty's Government trust that when this matter shall have been brought under the consideration of the government of the United States, it will, of its own accord, offer to the British Government such redress as alone could satisfy the British nation, namely, the liberation of the four prisoners taken from the Trent, and their delivery to your lordship, in order that they may be placed under British protection, and a suitable apology for the aggression, which has been committed. Earl Russell finally insists upon us to propose those terms to me, if I should not first offer them on the part of the Government.

This despatch has been submitted to the President. The British Government has rightly conjectured, what it is now my duty to state, that Capt. Wilkes, in conceiving and executing the proceeding in question, acted upon his own suggestions of duty, without any direction or instruction, or even foreknowledge of it on the part of this government. No directions had been given to him, or any other naval officer, to arrest the Trent, or any other British vessel, or to board any other neutral vessel, at the place where it occurred, or elsewhere. The British government will justly infer from these facts that the United States not only have had no purpose, but even no thought, of forcing into discussion the question which has arisen, or any other which could affect in any way the sensibilities of the British nation.

It is true that a round shot was fired by the San Jacinto from her pivot gun when the Trent was distantly approaching. But, as the facts have been reported to this government, the shot was nevertheless intentionally fired in a direction so obviously divergent from the course of the Trent as to be quite as harmless as a blank shot, while it should be regarded as a signal.

So also we learn that the Trent was not approaching the San Jacinto when she was fired across her bows, but, on the contrary, the Trent was, or seemed to be, moving under a full head of steam, as if with a purpose to pass the San Jacinto.

We are informed also that the boarding officer (Lieut. Fairfax) did not board the Trent with a large armed guard, but he left his marines in his boat when he entered the Trent. He stated his instructions from Capt. Wilkes to search for the four persons named, in a respectful and courteous manner, and he asked the captain of the Trent to show his passenger list, which was refused. The lieutenant, as we are informed, did not employ absolute force in transferring the passengers, but he used just so much as was necessary to satisfy the parties concerned that refusal or resistance would be unavailing.

So, also, we are informed that the Captain of the Trent was not at any time or in any way required to go on board the San Jacinto.

These modifications of the case as presented by Commander Williams are based upon our official reports.

I have now to remind your lordship of some facts which doubtless were omitted by Earl Russell, with the very proper and becoming motive of allowing them to be brought into the case, on the part of the United States, in the way most satisfactory to this government. These facts are, that at the time the transaction occurred an insurrection was existing in the United States which this government was engaged in suppressing by the employment of land and naval forces; that in regard to this domestic strife the United States considered Great Britain as a friendly power, while she had assumed for herself the attitude of a neutral; and that Spain was considered in the same light, and had assumed the same attitude as Great Britain.

It had been settled by correspondence that the United States and Great Britain mutually recognized as applicable to this local strife these two articles of the declaration made by the congress of Paris in 1856, namely, that the neutral or friendly flag should cover enemy's goods not contraband

of war, and that neutral goods not contraband of war are not liable to capture under an enemy's flag. These exceptions of contraband from favor were a negative acceptance by the parties of the rule hitherto everywhere recognized as a part of the law of nations, that whatever is contraband is liable to capture and confiscation in all cases.

James M. Mason and E. J. McFarland are citizens of the United States and residents of Virginia. John Slidell and George B. Eustis are citizens of the United States and residents of Louisiana. It was well known at Havana when these parties embarked on the Trent that James M. Mason was proceeding to England in the affected character of a minister plenipotentiary to the Court of St. James, under a pretended commission from Jefferson Davis, who had assumed to be president of the insurrectionary party in the United States, and E. J. McFarland was going with him in a like unreal character of secretary of legation to the pretended mission. John Slidell, in similar circumstances, was going to Paris as a pretended minister to the emperor of the French, and George Eustis was the chosen secretary of legation for that simulated mission. The fact that these persons had assumed such characters has been since avowed by the same Jefferson Davis in a pretended message to an unlawful and insurrectionary congress. It was, as we think, rightly presumed that these ministers bore pretended credentials and instructions, and such papers are in the law known as dispatches. We are informed by our consul at Paris that these dispatches, having escaped the search of the Trent, were actually conveyed and delivered to emissaries of the insurrection in England. Although it is not essential, yet it is proper to state, as I do also upon information and belief, that the owner and captain of the Trent, and the crew, including the Commander Williams, had knowledge of the assumed characters and purposes of the persons before named when they embarked on that vessel.

Your lordship will now perceive that the case before us, instead of presenting a merely flagrant act of violence on the part of Captain Wilkes, as might well be inferred from the incomplete statement of it that went up to the British government, was undertaken as a simple legal and customary belligerent proceeding by Captain Wilkes to arrest and capture neutral vessels engaged in carrying contraband of war for the use and benefit of the insurgents.

The question before us is, whether this proceeding was authorized by and conducted according to the law of nations. It involves the following inquiries:

1st. Were the persons named and their supposed dispatches contraband of war?

2d. Might Captain Wilkes lawfully stop and search the Trent for these contraband persons and dispatches?

3d. Did he exercise that right in a lawful and proper manner?

4th. Having found the contraband persons on board and in presumed possession of the contraband dispatches, had he a right to capture the persons?

5th. Did he exercise that right of capture in the manner allowed and recognized by the law of nations?

If all these inquiries shall be resolved in the affirmative, the British government will have no claim.

I address myself to the first inquiry, namely, were the four persons mentioned, and their supposed dispatches contraband?

Maritime law so generally deals, as its professors say, *in rem*, that is, with property, and so seldom with persons, that it seems a straining of the term contraband to apply it to them. But persons, as well as property, may become contraband, since the word means broadly "contrary to proclamation, prohibited, illegal, unlawful."

All writers and judges pronounce naval or military persons in the service of the enemy contraband. Vattel says a war allows us to cut off from an enemy all his resources, and to hinder him from sending ministers to solicit assistance. And Sir William Scott says you may stop the ambassador of your enemy on his passage. Despatches are not less clearly contraband, and the bearers or couriers who undertake to carry them fall under the same condemnation.

A subtlety might be raised whether pretended ministers of an uprising power, not recognized as legal by either the belligerent or the neutral, could be held to be contraband. But it would disappear on being subjected to what is the true test in all cases—namely, the spirit of the law. Sir William Scott, speaking of civil magistrates who were arrested and detained as contraband, says:

"It is important to me on principle to be but reasonable that when it is of sufficient importance to the enemy that such persons shall be sent out on the public service, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations."

I trust that I have shown that the four persons who were taken from the Trent by Capt. Wilkes, and their despatches, were contraband of war.

The second inquiry is, whether Captain Wilkes had a right by the law of nations to detain and search the Trent?

The Trent, though she carried mails, was a contract or merchant vessel—a common carrier for hire. Maritime law knows only three classes of vessels—vessels of war, revenue vessels, and merchant vessels. The Trent falls within the latter class.

Whatever disputes have existed concerning a right of visitation and search in time of peace, none, it is supposed, has existed in modern times about the right of a belligerent in the time of war to capture contraband in neutral and even friendly merchant vessels, and of the right of visitation and search, in order to determine whether they are neutral, and are documented as such according to the law of nations.

I assume, in the present case, what, as I read British authorities, is regarded by Great Britain herself as true maritime law: that the circumstance that the Trent was proceeding from a neutral port to another neutral port does not modify the right of the belligerent captor.

The third question is, whether Captain Wilkes exercised the right of search in a lawful and proper manner?

If any doubt hung over this point, as the case was presented in the statement of it adopted by the British government, I think it must have already passed away before we on board the Trent had Capt. Wilkes a right to capture the same?

Such a capture is the chief if not the only recognized objection of the permitted visitation and search. The principle of the law is, that the belligerent exposed to danger may prevent the contraband persons or things from applying themselves or being applied to the hostile uses or purposes designed. The law is so very liberal in this respect that when contraband is found on board a neutral vessel, not only the contraband itself, but the vessel which carries it, and the vehicle of its passage or transportation, being tainted also becomes contraband, and is subjected to capture and confiscation.

Only the fifth question remains, namely: Did Capt. Wilkes exercise the right of capturing the contraband in conformity with the law of nations?

It is just here that the difficulties of the case begin. What is the manner which

the law of nations prescribe for disposing of the contraband when you have found and seized it on board of the neutral vessel? The answer would be easily found if the question were what you shall do with the contraband vessel. You must take or send her to a judicial prosecution there in admiralty, which will try and decide the question of belligerence, neutrality, contraband, and capture. So, again, you will simply follow the same answer if the question be: What is the manner of disposing prescribed by the law of nations in regard to the contraband if it be property or things of material or pecuniary value?

But the question here concerns the mode of procedure in regard, not to the vessel which was carrying the contraband, nor yet to contraband things which worked the forfeiture of the vessel, but to contraband persons.

The books of law are dumb. Yet the question is as important as it is difficult. First, the belligerent captor has a right to prevent the contraband officer, soldier, sailor, minister, messenger, or courier from proceeding in his unlawful voyage on such a vessel. But, on the other hand, the person captured may be innocent—that is, he may not be contraband. He, therefore, has a right to a fair trial of the accusation against him. The neutral state that has taken him under its flag, is bound to protect him if he is not contraband, and is, therefore, entitled to be satisfied upon that important question. The faith of that state is pledged to his safety, if innocent, as its justice is pledged to his surrender if he is really contraband. Here are conflicting national claims, involving personal liberty, life, honor, and duty. Here are conflicting claims, involving welfare, safety, honor and empire. They require a tribunal, and the tribunal must be impartial. The tribunal are equals: the neutral and the belligerent state are equals.

While the law authorities were found silent, it was suggested at an early day by this government that you should take the captured persons into a convenient port and institute judicial proceedings there to try the controversy. But only courts of admiralty have jurisdiction in maritime cases, and these courts have formulas to try only claims to contraband chattels, but none to try claims concerning contraband persons. The courts can entertain no proceedings and render no judgment in favor of or against the alleged contraband man.

It was replied all this is true, but you cannot evade the question of a tribunal which will have the moral weight of a judicial one by a circuitous proceeding. Convey the suspected men, together with the suspected vessel, into port, and try there the question whether the vessel is contraband. You can prove it to be so by proving the suspected men to be contraband, and the court must then determine the vessel to be contraband.

If the men are not contraband the vessel will escape condemnation. Still there is no judgment for or against the captured persons. But it was assumed that there would result from the determination of the court concerning the vessel a legal certainty concerning the character of the men.

This course of proceeding seemed open to many objections. It elevates the incidental interior or private interest in the property of the men to a paramount position, and possibly it may make the fortunes of the men, or the existence of a nation depend on the accidents of a merely personal and pecuniary litigation. Moreover, when the judgment of the prize court upon the lawfulness of the capture of the vessel is rendered, it really concludes nothing, and binds neither the belligerent state nor the neutral upon the great question of the disposition to be made of the captured contraband persons. That question is still to be really determined, if at all, by diplomatic arrangement or by war.

One may well express his surprise when he reads the statement of the case as furnished me more reasonably, practical, and in a more than this of determining questions of such grave import between sovereign powers. The regret we may feel on the occasion is nevertheless modified by the reflection that the difficulty is not altogether or anomalous. Similar and equal deficiencies are found in every system of municipal law, especially in the system which exists in the greater portions of Great Britain and the United States. The title to personal property can hardly ever be resolved by a court without resorting to the fiction that the claimant has lost and the possessor has found it, and the title to real estate is disputed by real litigants under the names of imaginary parties.

It is important to me on principle to be but reasonable that when it is of sufficient importance to the enemy that such persons shall be sent out on the public service, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations."

I trust that I have shown that the four persons who were taken from the Trent by Capt. Wilkes, and their despatches, were contraband of war.

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The Trent, though she carried mails, was a contract or merchant vessel—a common carrier for hire. Maritime law knows only three classes of vessels—vessels of war, revenue vessels, and merchant vessels. The Trent falls within the latter class.

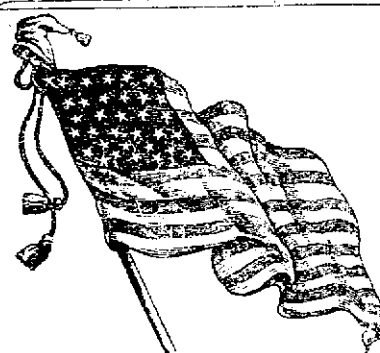
Whatever disputes have existed concerning a right of visitation and search in time of peace, none, it is supposed, has existed in modern times about the right of a belligerent in the time of war to capture contraband in neutral and even friendly merchant vessels, and of the right of visitation and search, in order to determine whether they are neutral, and are documented as such according to the law of nations.

I assume, in the present case, what, as I read British authorities, is regarded by Great Britain herself as true maritime law: that the circumstance that the Trent was proceeding from a neutral port to another neutral port does not modify the right of the belligerent captor.

The third question is, whether Captain Wilkes exercised the right of search in a lawful and proper manner?

If any doubt hung over this point, as the case was presented in the statement of it adopted by the British government, I think it must have already passed away before we on board the Trent had Capt. Wilkes a right to capture the same?

Such a capture is the chief



Forever float that standard sheet!
Where breathes the foe but falls before us?
With Freedom's soil beneath our feet,
And Freedom's banner streaming over us!

The Case of the Trent.

We publish to-day Mr. Seward's reply to Earl Russell's letter on the Trent affair. We do not publish the communication of the latter, because its contents are fully stated by Mr. Seward.

A communication also accompanies Mr. Seward's letter, from M. Thoreau, French minister of foreign affairs, in which he deprecates the injury which would result to neutral vessels if the act of Com. Wilkes should be approved, and hopes that the persons taken from the Trent will be released.

Mr. Seward makes a courteous reply, telling M. Thoreau that the president had directed their release before the receipt of his communication, and intimating that this government is ready to make a more definite arrangement in relation to the whole subject of neutral rights than now exists.

The letter of Mr. Seward in reply to Earl Russell is long, but the great interest which attaches to the subject, as well as justice to Mr. Seward, requires its general publication. It is characterized by its usual ability, and the unpleasant subject which he discusses is treated as if nothing disagreeable had taken place. It even appears to be pleased that Russell has called his attention to a subject which otherwise might have escaped his notice, and is especially gratified that the question, the exercise of the right of search and seizure on board of neutral vessels, which has so long been a matter of dispute between this country and England, is at last "finally settled" between them, on the American basis. Perhaps this is so, but we do not see by this correspondence that England has agreed to anything, except that she wants Mason and Slidell given up and an apology for the affront she says she has received. We fail to find any "apology" in Mr. Seward's communication, but perhaps it may be inferred, from the readiness with which the prisoners were surrendered. We hope England will be satisfied now, but we have little expectation that such will be the case.

The perusal of this correspondence confirms the first impression in relation to the affair: that an outrage was committed when the captain of the Trent, attempted to convey Mason and Slidell to England, knowing their character, which the British government seeks to justify; and that we are compelled to forgo satisfaction for the injury, because that government takes advantage of the quibble about a prize court; and for the further reason that it is impolitic for us to seem to defend an unrestricted right of search, in which so many inferior commercial powers are interested, who would be necessarily against us, in the shape in which the matter stood. This false position in which we were placed by England, and the aggression perpetrated in insisting upon conveying the rebel emissaries to Europe, will not soon be forgotten by our people.

IN TOWN.—Charles H. Windt, the western traveling agent of the Merchant's Despatch Line, has been in town a day or two, on his annual western trip. The "freedom of the city" has been informally voted to Charlie, and he is now in the full enjoyment of it. We commend Charlie to our friends everywhere as the right kind of a man, and his company as worthy of the utmost confidence. Artemas Ward, white connected with the Cleveland Plaindealer, asserted that Mr. W. had "more than twelve acres of friends," and we incline to the same opinion, while we know his company is eminently "sound" and confessedly expeditious.

CAMP TREDFAX, JAN. 2, '62.
All persons holding orders drawn on the pay master, of the thirteenth regiment by the undersigned captains of said regiment, will please present them to the respective captains drawing the same, by Friday morning, eight o'clock.
Edward Ruger, Capt. Co. A.
Ed. E. Woodman, Capt. Co. B.
A. H. Kummel, Capt. Co. C.
E. W. Blake, Capt. Co. D.
Robert E. Hewitt, Capt. Co. E.
F. F. Stevens, Capt. Co. F.
A. W. Randall, Capt. Co. G.
J. L. Pratt, Capt. Co. H.
J. H. Lauderdale, Capt. Co. I.
Phily Norcross, Capt. Co. K.

SCHOOL FESTIVAL.—The annual festival for the benefit of St. Catharine's school will be held at the Hyatt House on Wednesday evening, January 8th.

When our citizens will bear in mind that in the school for the benefit of which this festival is to be held, there are over two hundred children taught without any expense to the city school fund, it must certainly present itself favorably for their support.

Aside from its immediate object, the manner in which the former festivals for the same purpose have been conducted, warrant us in stating that the occasion will afford an opportunity for those who may wish to attend to spend an evening very agreeably.

The Case of Mason and Slidell.

MR. SEWARD TO LORD LYONS.

DEPARTMENT OF STATE,
Washington, Dec. 26, 1861.
My Lord: Earl Russell's dispatch of November the 30th, a copy of which you have left with me at my request, is of the following effect, namely:
That a letter of Commander Williams, dated royal mail packet-boat, Trent, at sea, Nov. 26, states that that vessel left London on the 7th of November, with her Majesty's mails for England, having on board numerous passengers. Shortly after noon, on the 8th of November, the United States war steamer San Jacinto, Capt. Wilkes, not showing colors, was observed ahead. That steamer, on being hailed by the Trent, at one o'clock fifteen minutes in the afternoon, fired a round shot from a pivot gun across her bows, and showed American colors. While the Trent was approaching slowly toward the San Jacinto she discharged a shell across the Trent's bows, which exploded at half a cable's length before her. The Trent then stopped, and an officer with a large armed guard of marines boarded her. The officer said he had orders to arrest Messrs. Mason, Slidell, McFarland and Eustis, and had some information that they were passengers in the Trent. While some parley was going on upon this matter, Mr. Slidell stepped forward and said to the American officer that the four persons he had named were standing before him. The commander of the Trent and Commander Williams protested against the act of taking those four persons out of the Trent, they then being under the protection of the British flag. But the San Jacinto was at this time only two hundred yards distant, her ship's company at quarters, her ports open, and toponas out, and so resistance was out of the question. The four persons before named were then forcibly taken out of the ship. A further demand was made that the commander of the Trent should proceed on board the San Jacinto, but he was not willing to go unless forcibly compelled to do so, and this demand was not insisted upon.

Upon this statement Earl Russell remarks that it thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral power, while that vessel was pursuing a lawful and innocent voyage, an act of violence which was an affront to the British flag and a violation of international law.

Earl Russell next says that his Majesty's government, bearing in mind the friendly relations which long subsisted between Great Britain and the United States, are willing to believe that the naval officer who committed this aggression was not acting in compliance with any authority from his government, or that, if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received.

Earl Russell argues that the United States must be fully aware that the British government could not allow such a violation to the national honor to pass without full reparation, and he declares to believe that it could not be the deliberate intention of the government of the United States unnecessarily to force into discussion between the two governments a question so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

Earl Russell, resting upon the statement and the argument which I have thus recited, closes with saying that his Majesty's Government trust that what the British government shall do under the consideration of the government of the United States, it will, of its own accord, offer to the British Government such redress as alone could satisfy the British nation, namely, the liberation of the four prisoners taken from the Trent, and their delivery to their lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed. Earl Russell finally instructs you to propose those terms to me, if I should not first offer them on the part of the Government.

A dispatch has been submitted to the President.

The British Government has rightly conjectured, what it is now my duty to state, that Capt. Wilkes, in conceiving and executing the proceeding in question, acted upon his own suggestions of duty, without any direction or instruction, or even knowledge of it on the part of this government. No directions had been given to him, or any other naval officer, to arrest the four persons named, whether British, or the officers of any other neutral vessel, at the place where it occurred, or elsewhere. The British government will justly infer from these facts that the United States not only have no purpose, but even no thought, of forcing into discussion the question which has arisen, or any other which could afford in any way the sensibilities of the British nation.

It is true that a round shot was fired by the San Jacinto from her pivot gun when the Trent was distinctly approaching. But, as the facts have been reported to this government, the shot was nevertheless intentionally fired in a direction so obviously divergent from the course of the Trent as to be quite as harmless as a blank shot, while it could be regarded as a signal.

So also we learn that the Trent was not approaching the San Jacinto slowly when the shell was fired across her bows, but, on the contrary, the Trent was, or seemed to be, moving under a full head of steam, as if with a purpose to pass the San Jacinto.

We are informed also that the boarding officer (Lieut. Fairfax) did not board the Trent with a large armed guard, but left his marines under the command of the Trent. He stated his instructions from Capt. Wilkes to search for the four persons named, in a respectful and courteous but decided manner, and he asked the captain of the Trent to show his passenger list, which was refused. The lieutenant, as we are informed, did not employ absolute force in transferring the passengers, but he used just so much as was necessary to satisfy the parties concerned that refusal or resistance would be unavailing.

So, also, we are informed that the Captain of the Trent was not at any time or in any way required to go on board the San Jacinto.

These modifications of the case as presented by Commander Williams are based upon our official reports.

I have now to remind your lordship of some facts which doubtless were omitted by Earl Russell, with the very proper and becoming motive of allowing them to be brought into the case, on the part of the United States, in the way most satisfactory to this government. These facts are, that at the time the San Jacinto was in the act of boarding the Trent, the United States considered Great Britain as a friendly power, while she had assumed for herself the attitude of a neutral; and that Spain was considered in the same light, and had assumed the same attitude as Great Britain.

It had been settled by correspondence that the United States and Great Britain mutually recognize the right of capturing the contraband in conformity with the law of nations.

It is just here that the difficulties of the case begin. What is the manner which

of war, and that neutral goods, not contraband of war are not liable to capture under an enemy's flag. These exceptions of contraband for favor were a negative action, taken by the parties of the rule hitherto everywhere recognized as a part of the law of nations, that whatever is contraband is liable to capture and confiscation in all cases.

James M. Mason and E. J. McFarland are citizens of the United States and residents of Virginia. John Slidell and George Eustis are citizens of the United States and of Louisiana. It was well known at Havana when these parties embarked on the Trent that James M. Mason was proceeding to England in the affected character of a minister plenipotentiary to the Court of St. James, under a pretended commission from Jefferson Davis, who had assumed to be president of the insurrectionary party in the United States, and E. J. McFarland was going with him in a like unreal character of secretary of legation to the pretended mission. John Slidell, in similar circumstances, was going to Paris as a pretended minister to the emperor of the French, and George Eustis was chosen secretary of legation for that simulated mission. The fact that these persons had assumed such characters has been since avowed by the same Jefferson Davis in a pretended message to an unlawful and insurrectionary congress. It was, as we think, rightly presumed that these ministers bore pretended credentials and instructions, and such papers are in the law known as dispatches.

We are informed by our consul at Paris that these dispatches, having escaped the search for them, were actually conveyed and delivered to the minister of the instruction in England. Although it is not essential, yet it is proper to state, as I do also upon information and belief, that the owner and agent, and all the officers of the Trent, including the Commander Williams, had knowledge of the assumed characters and purposes of the persons before named when they embarked on that vessel.

Your lordship will now perceive that the case before us, instead of presenting a novel and flagrant act of violence on the part of Captain Wilkes, as might well be inferred from the incomplete statement of it that went up to the British government, was undertaken as a simple legal and customary belligerent proceeding by Captain Wilkes to arrest and capture neutral vessels engaged in carrying contraband of war for the use and benefit of the insurgents.

The question before us is, whether this proceeding was authorized by and conducted according to the law of nations. It involves the following inquiries:

1st. Were the persons named and their supposed dispatches contraband of war?

2d. Might Captain Wilkes lawfully stop and search the Trent for these contraband persons and dispatches?

3d. Did he exercise that right in a lawful and proper manner?

4th. Having found the contraband persons on board and in presumed possession of the contraband dispatches, had he a right to capture the persons?

5th. Was the exercise that right of capture in the manner allowed and recognized by the law of nations?

If all these inquiries shall be resolved in the affirmative, the British government will have no claim for reparation.

I address myself to the first inquiry, namely, were the four persons mentioned, and their supposed dispatches contraband?

Maritime law so generally deals, as its professors say, *in rem*, that is, with property, and so seldom with persons, that it seems a strange thing when the contraband shall be persons. But persons, as well as property, may become contraband, since the word means broadly "contrary to proclamation, prohibited, illegal, unlawful."

All writers and judges pronounce naval or military persons in the service of the enemy contraband. Vattel says war allows us to cut off from an enemy all his resources and to hinder him from sending ministers to solicit assistance. And Sir William Scott says you may stop the ambassador of your enemy on his passage. Despatches are not less clearly contraband, or the bearers or carriers who undertake to carry them fall under the same condemnation.

A subtly might be raised whether pretended ministers of an usurping power, not recognized as legal by either the belligerent or the neutral, could be held to be contraband. But it would disappear on being subjected to what is the true test in all cases—namely, the spirit of the law. Sir William Scott, speaking of civil magistrates who were arrested and detained as contraband, says:

"It is reasonable to me on principle to be but reasonable that when it is of sufficient importance to the enemy that such persons shall be sent out on the public service at the public expense, it should afford equal ground for forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations."

I trust that I have shown that the four persons who were taken from the Trent by Capt. Wilkes, and their despatches, were contraband of war.

The second inquiry is, whether Captain Wilkes had a right by the law of nations to detain and search the Trent?

The Trent, though she carried mails, was a contract or merchant vessel—a common carrier for hire. Maritime law knows only three classes of vessels—vessels of war, revenue vessels, and merchant vessels. The Trent falls within the latter class. Whatever disputes have existed concerning a right of visitation and search in time of peace, none, it is supposed, has existed in modern times about the right of a belligerent in the time of war to capture contraband in neutral and even friendly merchant vessels, or of the right of visitation and search in order to determine contraband. Capt. Wilkes is not to be considered as such a belligerent, but as a neutral.

I assume, in the present case, what, as I read British authorities, is regarded by Great Britain herself as true maritime law: that the circumstance that the Trent was proceeding from a neutral port to another neutral port does not modify the right of the belligerent captor.

The third question is, whether Captain Wilkes exercised the right of search in a lawful and proper manner?

If we doubt longer on this point, as the case was presented in the statement of adopted by the British government, I think it must have already passed away before the modification of that statement which I have already submitted.

I proceed to the fourth inquiry, namely: Having found the suspected contraband of war on board the Trent had Capt. Wilkes a right to capture the same?

Such a capture is the chief if not the only recognized objection of the permitted visitation and search. The principle of the law is, that the belligerent exposed to danger may prevent the contraband persons or things from applying themselves or being applied to the hostile use for purposes assigned. The law is very liberal in this respect that when contraband is found on board a neutral vessel, not only is the contraband forfeited, but the vessel, which is the vehicle of its passage or transportation, being tainted also becomes contraband, and is subjected to capture and confiscation.

The books of law are dumb. Yet the question is as important as it is difficult. First, the belligerent captor has a right to prevent the contraband officer, soldier, sailor, minister, messenger, or courier from proceeding in his unlawful voyage and reaching the destined scene of his injuries. But on the other hand, the person captured may be innocent—He may not be contraband. He, therefore, has a right to a fair trial of the accusation against him. The neutral state that has taken him under its flag, is bound to protect him if he is not contraband, and is, therefore, entitled to be satisfied upon that important question. The faith of that state is pledged to his safety, if innocent, as its justice is pledged to his surrender if guilty. But on the other hand, the person captured may be innocent—He may not be contraband. He, therefore, has a right to a fair trial of the accusation against him. 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